



TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

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STATUTORY NOTICE OF WATER LEVEL FLUCTUATIONS CONTRACT LANGUAGE

House Bill 1665 enacted by the 84th Legislature adds Section 5.019 to the Property Code. This section requires a seller of residential or commercial property that adjoins a lake, reservoir, or other impoundment of water with a normal operating capacity of 5,000 acre-feet or more to give the buyer a statutorily prescribed form of notice on or before the effective date of the contract. If the notice is not given, the buyer may terminate the contract for any reason within seven days after receiving the notice from the seller or information described by the notice from any other person. After the date of conveyance, the buyer may bring an action against the seller for misrepresentation if the seller failed to give the notice before the conveyance and had actual knowledge that the water level fluctuates. This provision becomes effective September 1, 2015.

Until revised contract forms addressing this statutory requirement are adopted by the Commission, license holders may insert the following language in the Special Provisions paragraph of a contract if a property adjoins such a body of water.

"NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

Proposed Promulgated Contract Changes Update

The Commission has proposed changes to the following forms recommended by the Broker Lawyer Committee:

TREC Form No. 9-12 *Unimproved Property Contract*

TREC Form No. 20-13 *One to Four Family Residential Contract (Resale)*

TREC Form No. 23-14 *New Home Contract (Incomplete Construction)*

TREC Form No. 24-14 *New Home Contract (Complete Construction)*

TREC Form No. 25-11 *Farm and Ranch Contract*

TREC Form No. 26-7 *Seller Financing Addendum*

TREC Form No. 30-12 *Residential Condominium Contract (Resale)*

TREC Form No. 32-4 *Condominium Resale Certificate*

TREC Form No. 38-5 *Notice of Buyer's Termination of Contract*

TREC Form No. 39-8 *Amendment to Contract*

TREC Form No. 40-7 *Third Party Financing Addendum*

OP-H, *Seller's Disclosure of Property Condition*

Redline versions of the proposed forms can be found [under recently proposed rules](#).

Comments on the proposals should be sent to general.counsel@trec.texas.gov before October 4th so that they can be considered by the Broker Lawyer Committee at their October 7th meeting.

Contract Changes Highlights

The noted changes apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*. The *One to Four Family Residential Contract (Resale)* and the new *Third Party Financing Addendum* will be reviewed in detail later in this chapter.

Paragraph 3, Sales Price, now references all of the financing addenda previously contained in paragraph 4 of the old versions.

The *Third Party Financing Addendum* is completely rewritten and addresses both credit approval and property approval by the lender. Reverse mortgage loans are also addressed in this addendum so form OP-N, *Reverse Mortgage Financing Addendum* is repealed.

A new paragraph 4 is added regarding license holder disclosure. This paragraph is where a license holder will disclose that he or she is a party to the transaction or related to a party that

requires disclosure under the law.

A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, is added to add new statutory notice requirement regarding the fluctuation of the level of certain impoundments of water that adjoin a property.

Paragraph 7A, Property Condition, Access, Inspections and Utilities, is amended to add a provision that hydrostatic testing must be authorized by the seller in writing.

Paragraph 9, Closing, is amended to add a provision allowing a ten-day extension of closing if the buyer's lender is required to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule. Paragraph 9B(5) is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant the buyer has *acquired* the property and is responsible for the return of the security deposit.

Paragraph 14, Casualty Loss, is amended to make it clear that an insurance company must permit insurance proceeds to be assigned to the buyer before the buyer can use this option after a casualty.

Paragraph 18D, Escrow Damages, is amended to take out the treble damages provision based on recent case law.

Paragraph 23, Termination Option is amended to require a 5 p.m. local time deadline for delivery of all notices under the paragraph.

License numbers are added to the Broker Information Section to facilitate compliance with the TILA-RESPA Integrated Disclosure Rule

Paragraph 13, Prorations and Rollback Taxes, in the *Farm and Ranch* and *Unimproved Property Contract* forms, is amended to provide that assessments imposed due to the seller's use or change in use of the property are the seller's responsibility.

A new Paragraph 2D to the *Condominium Contract Form* is added to address situations where condominium documents reveal the existence of a right of first refusal after the parties entered into a contract.

The *Condominium Resale Certificate* is amended to conform to new statutory disclosure requirements. (This was also adopted by emergency since the new statutory requirements are effective September 1, 2015.)

The Commission held its regular quarterly meeting on August 17th. As usual, the meeting was simulcast over the internet via the agency's website. The agenda was extensive, and filled with examples of the important work TREC is charged to accomplish.

As you likely know, since our last meeting in May, SB 699 was signed by the Governor and it accomplishes many of the policy objectives sought by the Commission as developed through the strategic planning process we undertook last year. The bill will become law effective January 1, 2016. This is a great advance for Texans and all of the professionals who make their living providing professional brokerage services on their behalf. Our gratitude goes out to those who worked hard to ensure the bill's passage, but especially the dedicated team at the Texas Association of Realtors.

Our agenda reflected the work since May of every committee and working group of the Commission. We adopted rules that were proposed at our meeting in May and some emergency rules necessary to implement other legislative initiatives that will become law on September 1, 2015. Many other rules were proposed for amendment as necessary to implement SB 699. We encourage all of you to review the published proposals and offer your comments by sending them to general.counsel@trec.texas.gov by September 30th. That will give us the time to review all of your comments and suggest revisions.

One of the most important tasks we are charged to accomplish is to coordinate the work of the Broker Lawyer Committee. They propose amendments to our standard form contracts to ensure they accurately reflect current law and the best practices that have developed in our industry. The goal is to ensure predictability and efficiency in our residential real estate transactions. Balancing these is no small task and we thank all of those who are dedicated to ensuring we do this effectively. The Committee recommended several updates to some major

contracts and the Commission proposed these for your consideration. Feedback from all sectors of the industry is a primary key to the success of this process. We welcome your input as to whether these amendments meet the objectives outlined. Let us know.



Avis Wukasch, Chair

At the meeting, the Commission also adopted a budget for FY 2016, updated the agency's current Memorandum of Understanding with the Appraisal Board to better reflect long-range projects, and considered a potential expansion of the scope of the agency's agreement for collaboration with the Real Estate Center at Texas A&M. Overall, the work we do reflects an ongoing commitment to keep the Commission relevant, effective and responsive to the needs of Texans - who rely on us to ensure that the real estate service providers who serve them are both competent and ethical.

In September, the Association of Real Estate License Law Officials (ARELLO) will meet in DC and we will be in attendance to ensure that Texas' voice is heard when national and interstate policies are being shaped and interpreted. We continue to learn from the valuable experiences of other states and share our experience in Texas as a potential model for others.

Thank you all for helping to make the work of the Commission a true reflection of the professionalism of our license holders. Together, we bring out the best in each other to better serve Texas.

IMPORTANT DATES TO REMEMBER

Broker Lawyer Committee Meeting— Oct 7

ESAC Committee Meeting— Oct 12

Broker Working Group Meeting— Oct 13

TREC Commission Meeting—Nov 2

Check the TREC website regularly for postings of all of our upcoming meetings.

TREC Education Update

The Commission keeps education providers updated by sending email notifications of upcoming policy and rule changes and deadlines. Education providers must maintain a current email address on file with the Commission and should contact our office at education@trec.texas.gov if there are any changes to contact information.

Qualifying Providers

August 21 is the deadline for revisions to qualifying Real Estate Finance courses offered via alternative delivery or correspondence. Students who complete a Real Estate Finance course after this date must complete the revised Real Estate Finance course to be awarded qualifying credit. The deadline for revisions of this course offered via classroom delivery was May 21, 2015.

Remember, all Real Estate and Inspector qualifying (formerly known as "core") courses approved prior to January 1, 2011 will expire on December 31, 2015. Students enrolled in any of these courses must complete them prior to this date for credit to be awarded. New course applications and fees will be required for staff to review and approve these courses in accordance with current standards. Approved courses will receive a four year term, subject to updates and revisions as set out in Commission rules. Education providers are reminded to allow ample time for review and approval of these courses prior to the December 31st deadline.

CE Providers

New Legal Update I and Legal Update II courses will replace the TREC Legal & Ethics non-elective CE courses effective January 1, 2016. Each Legal Update course will cover 4 hours of material. Approved instructors must complete the instructor training and obtain certification from TREC to teach these new courses. Training is available through the Real Estate Center. Register at Texas A&M website at www.recenter.tamu.edu. Six training sessions are currently scheduled from September 22 through November 3. Additional information regarding these courses will soon be available on the TREC website.

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

Rule Actions from the August 17th Meeting of the Commission

Adopted Rules

The following is a summary of amendments to TREC Rules adopted at the August 17, 2015 meeting of the Commission. Unless otherwise noted, they will be effective September 7, 2015. You can see the full text of the rules at the Recently Adopted Rules section of our [website](#).

§539.81, Funded Reserve. These amendments are a re-proposal following receipt of input from a stakeholder and discussions with the Texas Department of Insurance. The amendments specify that if a residential service company chooses to use a captive insurance company under Tex. Occ. Code §1303.152 to reinsure the liability remaining under the outstanding residential service contracts written in Texas in lieu of maintaining a funded reserve, that company can only do so for 75% of the required funded reserve.

§535.217, Mailing Address and Other Contact Information. The amendment corrects the timeframe in the rule from 10 days to 30 days to match Section 1102.118(b) in the Texas Occupations Code, which has a 30-day requirement.

§§535.400, Registration of Easement or Right-of-Way Agents and 535.402, Complaints, Disciplinary Action and Appeals. The amendments correct terminology, renumber for consistency, and provide a timeframe for responding to complaints for easement or right of way agents consistent with other license types.

§539.150, Complaints. The amendment to §539.150, Complaints clarifies terminology for consistency throughout the rules.

Adopted by Emergency, effective September 1, 2015

§537.39, Standard Contract Form FREC No. 32-3 (Condominium Resale Certificate). The Commission adopted revisions to the Condominium Resale Certificate recommended by the Broker Lawyer Committee to conform to new statutory disclosure requirements enacted by the 84th Legislature in SB 1168, including providing a balance sheet and greater detail on Association transfer fees.

Chapter 533, Subchapter B, Practice and Procedures. References to timeframes for filing in this subchapter were tied to the APA to ensure alignment with statutory changes made to the APA by the 84th Legislature.

§535.51, General Requirements for a Real Estate License and §535.208, Application for a License (Inspector). The amendments align the rules with statutory changes in SB 1307 adopted by the 84th Legislature to be effective September 1, 2015, which provides for expedited license processing to active military service members and veterans and waives certain license and application fees for applicants who meet designated criteria.

§535.91, Renewal of a Real Estate License and §535.216 Renewal of License (Inspector). The amendments align the rule with statutory changes in SB 1307, adopted by the 84th Legislature, to be effective September 1, 2015, which allow an active duty military service member two additional years to renew a license.

Proposed Rules

The following amendments or new rules were proposed at the August 17, 2015, meeting of the Commission and are up for adoption at the November 2, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section on our [website](#). Written comments on the proposed rules can be sent to general.counsel@trec.texas.gov and must be received prior to 5 p.m. October 4, 2015 to be considered by the appropriate advisory committee and included in the materials for the November meeting. After that date, comments will need to be made in person at the meeting.

All rules adopted by emergency are also proposed for publication and comment.

§531.18, Consumer Information (Brokers and Agents), §535.220, Professional Conduct and Ethics (Inspectors), and §535.401, Required Notices (ERW) The 84th Legislature authorized the Commission to adopt the form and delivery method for a consumer notice regarding complaints and recovery fund availability. The proposed revised form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§531.20, Information About Brokerage Services. The 84th Legislature authorized the Commission to adopt the form and delivery method for the Information about Brokerage Services notice. The proposed new form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§534.2, Processing Fees for Dishonored Payments. Proposed to update statutory numbering changes.

Chapter 535, General Provisions. Many amendments were proposed to align the rules with statutory changes in SB 699 enacted by the 84th Legislature including increasing non-elective CE course hours from 6-8, overall CE hours from 15 to 18 hours per renewal cycle, allowing CE credit for attendance at a February Commission meeting, and to require additional education after the third time an applicant fails the license examination; to clarify and improve performance and delivery standards for real estate and inspector education providers, courses and instructors; and to provide greater clarity in several rules providing for disciplinary action, including requirements for trust money and when a license holder is a party to a transaction. Redline copies of these proposals, along with a more detailed description of the changes can be found on our website.

Chapter 537, Professional Agreements and Standard Contracts. See article in this edition.

New/Revised Forms

The following new or revised forms were adopted and are effective September 1, 2015 unless otherwise noted:

SFMS-2, Supplemental Form for Military Spouse

Revised to comply with statutory changes, which extends expedited license processing to active military service members and veterans and waives certain license and application fees for applicants who meet designated criteria

OP-H, Seller's Disclosure

Revised to comply with statutory changes in HB 1221, adopted by the 84th Legislature, relating to seller's disclosures in connection with residential real property subject to groundwater regulation. Effective for use January 1, 2016.

BBE-5, Application for Broker License By a Business Entity

Revised to include \$100.00 increase in fees collected for the Real Estate Center at Texas A&M to comply with statutory changes in SB 699, adopted by the 84th Legislature. Also to remove the request for a fax number as this information is no longer required.

BL-7, Application for Real Estate Broker License by an Individual

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual broker applicants pursuant to statutory changes adopted by the 84th Legislature. Reduces fee from \$634.75 to \$334.75.

SBLR-6, Sales Agent and Broker License Reinstatement

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual brokers who file a reinstatement application to regain their license, pursuant to statutory changes adopted by the 84th Legislature. Reduces fee from \$619.75 to \$319.75. Form also updates reference from salesperson to sales agent.

RF-7, Renewal of Real Estate License – Timely or Expired Less than Six Months

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual brokers who timely renew or whose license has been expired 90 days or less or whose license has been expired more than 90 days but less than 6 months. This form is also revised to include the \$100.00 increase

in fees collected for the Real Estate Center at Texas A&M for broker business entities who are renewing timely, expired 90 days or less, or whose license is expired more than 90 days but less than 6 months. Both changes are made pursuant to statutory changes adopted by the 84th Legislature.

CE CAS-3, CE Course Application Supplement

Current form is revised to update language referencing TREC's legal update, ethics and broker responsibility courses to non-elective CE courses as well as update references from MCE to CE.

ED PAF-0, Education Provider Annual Fee Application

New form to be used for qualifying providers when submitting their annual fee to TREC. Currently this fee is submitted with a letter to TREC.

ISL-5, Application for Inactive Real Estate Sales Agent License

Certification statement is revised to include legal residents of a municipality whose boundary is contiguous with the boundary of a Texas municipality because they are also considered legal residents of Texas for the purpose of licensure.

ALTNM-0, Notice of Alternate Name for Sales Agent or Broker License

New form to be used by a sales agent or broker to register an alternate name such as a nickname or maiden name for use in advertising for their individual license.

BSCN-2, Change of Name for License Holder

Revised to clarify that the form should be used to change the legal name that appears on the license and not to be used to register an alternative name such as a nickname for use in advertising. Also updates references from salesperson to sales agent.

Residential Service Contracts: What Do You Need to Know?

What is a residential service company contract?

A residential service contract, also called a home warranty contract, is an agreement that covers certain repairs and replacements on systems in a residential property, usually for one year. Depending on the service contract, it may cover the structural components, appliances, or the electrical, plumbing, heating, cooling or air conditioning systems in a home.

A service contract is not insurance nor is it a replacement for insurance. A homeowner's insurance policy covers things such as damage to the structure of the property or to a homeowner's personal property. A service contract covers specific components of the home when they fail due to normal wear and tear.

What do you need to know about these contracts?

All companies selling service contracts in Texas must be licensed by the Commission. A current list of all licensed residential service companies is on our website.

A real estate sales agent or broker should be familiar with how a service contract works and what it covers. Typically, a contract only covers items that are in good working order when the contract is purchased. Many covered items have limitations of coverage and the contract may not cover the entire cost of all necessary repairs. A

sales agent or broker should never represent that the contract covers everything or that it is a substitute for negotiating necessary repairs with a seller. Making this type of representation violates the Texas Real Estate License Act.

Coverage and cost vary by company, so you should recommend that your client compare companies before making a decision on whether to purchase a contract. If a buyer does get a service contract, it is a good business practice to recommend that the buyer carefully review the contract before they need it so that they understand what is and is not covered by the contract.

Do I need to disclose that I'm getting paid by a residential service company?

Yes. A real estate sales agent or broker must present TREC Form RSC-1, Disclosure of Relationship with Residential Company, to each party the agent or broker represents. This form is on our website.

DID YOU KNOW?

Did you know that TREC keeps a list of all of the Residential Service Companies or "Home Warranty" Companies on our website? We do! Be sure to check out the [full list here](#) and refer your clients to it if they are in the market.

Agency TOP Performer



Tessa Sowell

TREC Standards and Enforcement Services

Tessa is a valuable asset to the SES division and the whole agency. Tessa employs patience and good listening skills to tactfully respond to inquiries. She is always willing and available to assist others on the team. Tessa has been an integral part of SES' paperless system implementation and fingerprint program integration. Tessa has lived in Texas all her life with the exception of 1 ½ years when she lived in Massachusetts. She has two kids Montana and Ryland who consume most of her spare time with sports and extracurricular activities, but that's what she loves. She also loves going to the beach and never misses a summer vacation in Port Aransas. Congratulations Tessa!

TREC Employee Update



Kimberly Hern

Education and Licensing Services

Kimberly began pursuing her bachelor degree at Texas State University when her twin girls were 6 months old. As a single mom, she wanted to be able to provide the best possible life for them. She graduated from Texas State University with a Bachelor of Arts and Sciences in December 2014 and shortly after began her new career at TREC. She is now planning to pursue her MBA with a minor in Management of Technology. She is grateful that the Texas Hazelwood Act and Texas A&M University Commerce's online Graduate Degree program makes it possible for single working mothers like her to pursue the education and skills needed to provide for her family. Now 3 years old, her beautiful twin girls provide the motivation and perseverance to see it through.

The Agency is always looking for highly qualified candidates to join our team. Right now, we have several key team member positions open that could be perfect for you! Please be sure to check out our [employment page](#) on our website to read all of the job postings.

